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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/804,451

03/12/2001

Earl J. Votolato

SPELL-003A

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08/01/2002

STETINA BRUNDA GARRED & BRUCKER

75 ENTERPRISE, SUITE 250

ALISO VIEJO, CA 92656

EXAMINER

DRUAN, THOMAS J

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 08/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/804,451

Applicant(s)

VOTOLATO, EARL

Examiner

Thomas J. Druan, Jr.

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,878,501 to Owens et al. (hereinafter Owens).

Owens discloses the invention as claimed including a handle 16 with a distal portion 32 and a generally hollow interior portion (a slot) 52; a blade 12 secured to and extending from said distal portion, said blade having a cutting edge (inherent); an integral, generally cylindrical blade cover 14, with a longitudinal slit through which the blade resides, for covering the cutting edge of the blade when the tool is not in use (note: "cylindrical" need not be a circular cylinder); a blade cover retainment member 78 for lockedly maintaining the blade cover in a position covering the cutting edge of the blade; a hand operable releaser 76 for releasing the retainment member from a locking configuration; a hand operable blade cover driver 72 for moving the blade cover an exposure distance (which is any distance that the cover is moved so as to expose the blade) and exposing the cutting edge of the blade for use; and an intercept member 74 for disengaging the blade cover driver upon blade cover movement exceeding the exposure distance and dispatching the blade cover to the locking configuration covering the cutting edge of the blade (column 4, lines 17-37).

The releaser and driver are incorporated as a trigger assembly comprising an exteriorly accessible finger-movable trigger lever 74/76 extending from the handle and in engaged communication first with the retainment member for releasing said member from the locking configuration upon initial trigger lever movement (when the trigger lever is pushed in) and in engaged communication second with a proximal site of the blade cover for moving the blade cover said exposure distance upon continued trigger lever movement (when the trigger lever is slid away from the blade). Said retainment member, said intercept member, and said proximal site of the blade cover are disposed within the generally hollow interior portion of the handle. The intercept member, which is part of the trigger lever, is disposed within a travel path of the blade cover (the slot 52) beyond said exposure distance for disengaging the engaged communication of the trigger lever with said proximal site of the blade cover when the blade cover is to be returned to a position that covers the cutting edge of the blade.

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stanley Jr., Stevenson Jr., Keklak et al., Dolgin et al., Oullette, and Abidin et al. are cited to show prior art knives having retractable guards. Peyrot et al. and Chomiak are cited to further show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Druan, Jr. whose telephone number is 703-308-4200. The examiner can normally be reached on M-F (8:30-6:00) First Friday Off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

*agf*

tjd

July 29, 2002

*Boyer Ashley*

BOYER D. ASHLEY  
PRIMARY EXAMINER